

AMENDED IN SENATE JUNE 5, 2007
AMENDED IN SENATE MAY 15, 2007
AMENDED IN SENATE APRIL 30, 2007
AMENDED IN SENATE APRIL 17, 2007
AMENDED IN SENATE MARCH 29, 2007

SENATE BILL

No. 407

Introduced by Senator Romero

(Coauthors: Assembly Members Beall, Dymally, and Horton)

February 21, 2007

An act to amend Sections ~~1037~~, 1037.1, 1037.2, 1037.4, and 1037.5 of the Evidence Code, *and to amend Section 679.05 of the Penal Code*, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 407, as amended, Romero. Domestic violence.

Existing law generally provides that no person has a privilege to refuse to be a witness or to refuse to disclose any matter or produce any writing, object, or other thing. However, a victim of domestic violence has a privilege to refuse to disclose and to prevent another from disclosing, a confidential communication, as defined, between the victim and a domestic violence counselor, as specified.

The California Constitution requires that a statute that would exclude relevant evidence in any criminal proceeding be enacted by a $\frac{2}{3}$ vote.

This bill would, among other things, expand the scope of the privilege by expanding the definition of a domestic violence counselor. The bill would also *make other related, conforming changes, and would make related specified* findings and declarations.

Because this bill would exclude relevant evidence in criminal proceedings, the bill would require a $\frac{2}{3}$ vote.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature hereby finds and declares
2 all of the following:

3 (1) It is the intent of the Legislature in enacting this act to clarify
4 and strengthen the applicable statutory definitions associated with
5 the domestic violence victim-counselor privilege. These
6 clarifications are designed to give all parties detailed information
7 about the privilege in accordance with emerging changes in
8 domestic violence programs and services.

9 (2) These provisions have played a critically important role in
10 protecting the lives and safety of domestic violence victims by
11 allowing them to access shelter programs and supportive services
12 that enable those victims and their children to escape their abusive
13 home environment and achieve independence from their abusers.

14 (3) However, since its enactment, the domestic violence
15 victim-counselor privilege provisions have not been amended to
16 reflect the growth in the types of comprehensive domestic violence
17 programs. Consequently, the current statutory definitions relating
18 to this privilege have caused some confusion within the domestic
19 violence community as to persons eligible to invoke the privilege
20 and the types of communications that shall be deemed confidential
21 and privileged.

22 (b) Finally, the Legislature hereby finds and declares that the
23 amendments to those provisions constitute clarifications and
24 revisions that are consistent with the original intent and purpose
25 of the domestic violence victim-counselor privilege.

26 ~~SEC. 2. Section 1037 of the Evidence Code is amended to read:~~

27 ~~1037. As used in this article, "victim" means any adult or minor~~
28 ~~who suffers a mental, physical, or emotional condition caused by~~
29 ~~domestic violence, as defined in Section 1037.7.~~

30 ~~SEC. 3.~~

31 SEC. 2. Section 1037.1 of the Evidence Code is amended to
32 read:

1037.1. (a) As used in this article, “domestic violence counselor” means a person who is employed by a domestic violence victim service organization, as defined in this article, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of domestic violence and who meets one of the following requirements:

(1) Is a psychotherapist, as defined in Section 1010.

(2) Has a master’s degree in counseling or a related field.

(3) Has one year of counseling experience, at least six months of which is in the counseling of domestic violence victims.

(4) Has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a counselor under paragraph (1), (2), or (3). The training, supervised by an individual who qualifies as a counselor under paragraph (1), (2), or (3), shall include, but need not be limited to, the following areas: history of domestic violence, civil and criminal law as it relates to domestic violence, the domestic violence victim-counselor privilege and other laws that protect the confidentiality of victim records and information, societal attitudes towards domestic violence, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of domestic violence victims, and referral services available to domestic violence victims.

(b) As used in this article, “domestic violence victim service organization” means a nongovernmental organization or entity that provides shelter, programs, or services to victims of domestic violence and their children, including, but not limited to, ~~domestic~~ *either of the following:*

(1) *Domestic* violence shelter-based programs, as described in Section 18294 of the Welfare and Institutions ~~Code, and other~~ *Code.*

(2) *Other* programs with the primary mission to provide services to victims of domestic violence whether or not that program exists in an agency that provides additional services.

~~SEC. 4.~~

SEC. 3. Section 1037.2 of the Evidence Code is amended to read:

1037.2. (a) As used in this article, “confidential communication” means any information, including, but not limited to, written or oral communication, transmitted between the victim

1 and the counselor in the course of their relationship and in
2 confidence by a means which, so far as the victim is aware,
3 discloses the information to no third persons other than those who
4 are present to further the interests of the victim in the consultation
5 or those to whom disclosures are reasonably necessary for the
6 transmission of the information or an accomplishment of the
7 purposes for which the domestic violence counselor is consulted.
8 The term includes all information regarding the facts and
9 circumstances involving all incidences of domestic violence, as
10 well as all information about the children of the victim or abuser
11 and the relationship of the victim with the abuser.

12 (b) The court may compel disclosure of information received
13 by a domestic violence counselor which constitutes relevant
14 evidence of the facts and circumstances involving a crime allegedly
15 perpetrated against the victim or another household member and
16 which is the subject of a criminal proceeding, if the court
17 determines that the probative value of the information outweighs
18 the effect of disclosure of the information on the victim, the
19 counseling relationship, and the counseling services. The court
20 may compel disclosure if the victim is either dead or not the
21 complaining witness in a criminal action against the perpetrator.
22 The court may also compel disclosure in proceedings related to
23 child abuse if the court determines that the probative value of the
24 evidence outweighs the effect of the disclosure on the victim, the
25 counseling relationship, and the counseling services.

26 (c) When a court rules on a claim of privilege under this article,
27 it may require the person from whom disclosure is sought or the
28 person authorized to claim the privilege, or both, to disclose the
29 information in chambers out of the presence and hearing of all
30 persons except the person authorized to claim the privilege and
31 such other persons as the person authorized to claim the privilege
32 consents to have present. If the judge determines that the
33 information is privileged and shall not be disclosed, neither he nor
34 she nor any other person may disclose, without the consent of a
35 person authorized to permit disclosure, any information disclosed
36 in the course of the proceedings in chambers.

37 (d) If the court determines that information shall be disclosed,
38 the court shall so order and inform the defendant in the criminal
39 action. If the court finds there is a reasonable likelihood that any
40 information is subject to disclosure pursuant to the balancing test

provided in this section, the procedure specified in subdivisions (1), (2), and (3) of Section 1035.4 shall be followed.

~~SEC. 5.~~

SEC. 4. Section 1037.4 of the Evidence Code is amended to read:

1037.4. As used in this article, “holder of the privilege” means:

(a) The victim when he or she has no guardian or conservator.

(b) A guardian or conservator of the victim when the victim has a guardian or conservator, unless the guardian or conservator is accused of perpetrating domestic violence against the victim.

~~SEC. 6.~~

SEC. 5. Section 1037.5 of the Evidence Code is amended to read:

1037.5. A victim of domestic violence, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a domestic violence counselor in any proceeding specified in Section 901 if the privilege is claimed by any of the following persons:

(a) The holder of the privilege.

(b) A person who is authorized to claim the privilege by the holder of the privilege.

(c) The person who was the domestic violence counselor at the time of the confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

SEC. 6. *Section 679.05 of the Penal Code is amended to read:*

679.05. (a) A victim of domestic violence or abuse, as defined in Sections 6203 or 6211 of the Family Code, or Section 13700 of the Penal Code, has the right to have a domestic violence counselor and a support person of the victim’s choosing present at any interview by law enforcement authorities, prosecutors, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the prosecutor if the law enforcement authority or the prosecutor determines that the presence of that individual would be detrimental to the purpose of the interview. As used in this section, “domestic violence counselor” ~~is~~ *means either a person employed by a program specified in Section 13835.2 for the purpose of rendering advice*

1 *or assistance to victims of domestic violence, or as defined in*
2 *Section 1037.1 of the Evidence Code.*

3 (b) (1) Prior to the commencement of the initial interview by
4 law enforcement authorities or the prosecutor pertaining to any
5 criminal action arising out of a domestic violence incident, a victim
6 of domestic violence or abuse, as defined in Section 6203 or 6211
7 of the Family Code, or Section 13700 of this code, shall be notified
8 orally or in writing by the attending law enforcement authority or
9 prosecutor that the victim has the right to have a domestic violence
10 counselor and a support person of the victim's choosing present
11 at the interview or contact. This subdivision applies to investigators
12 and agents employed or retained by law enforcement or the
13 prosecutor.

14 (2) At the time the victim is advised of his or her rights pursuant
15 to paragraph (1), the attending law enforcement authority or
16 prosecutor shall also advise the victim of the right to have a
17 domestic violence counselor and a support person present at any
18 interview by the defense attorney or investigators or agents
19 employed by the defense attorney.

20 (c) An initial investigation by law enforcement to determine
21 whether a crime has been committed and the identity of the
22 suspects shall not constitute a law enforcement interview for
23 purposes of this section.